

BOARD OF PESTICIDES CONTROL

February 24, 2006

Colby/Thomas Room, Hampton Inn
425 Kennedy Memorial Drive, Waterville

AGENDA/MINUTES

9:30 A.M.

Chair Carol Eckert called the meeting to order at 9:36 A.M. Other members in attendance included Bradstreet, Humphries, and Walton. Jemison arrived about 20 minutes later and Berry and Simonds were unable to attend. Assistant Attorney General Mark Randlett was also present.

1. Introductions of Board and Staff

- ☒ The members and staff introduced themselves.

2. Public Hearing on Adoption of New Chapter 26 - Standards for Pesticide Applications and Notification for All Occupied Buildings Except K-12 Schools

The Board has redrafted a proposed rule to establish standards for applicators applying pesticides inside occupied private and public buildings other than K-12 Schools covered by Chapter 27. Additional details of the proposed rule were described in the public hearing notice published in major newspapers on February 1, 2005. Copies of the proposed rule are available upon request or may be viewed on the Board's web site at www.thinkfirstspraylast.org.

A sign up sheet will be available at the door for persons wishing to present information about the proposed rule. Written comments may be submitted to the Board's address above until 4:00 P.M. on Friday, March 10, 2006.

- ☒ A court reporter transcribed the public hearing and will be preparing a separate transcript of the proceeding.

3. Minutes of the January 20, 2006 Board Meeting

Action Needed: Amend and/or Approve

- ☒ Randlett requested the minutes for Agenda Item # 8 be revised so the last sentence read "He also indicated that he had already offered Maine Helicopters, Inc. a consent agreement to settle the case rather than having the staff perform this usual action."

Jemison/Humphries: Motion made and seconded to approve the minutes as amended to meet Randlett's request.

In Favor: Unanimous

4. Minutes of the January 27, 2006 Special Board Meeting

Action Needed: Amend and/or Approve

- ☒ Randlett noted there was a typo in the spelling of school in the last line of the introductory paragraph on the first page.

Humphreys/Walton: Motion made and seconded to approved the minutes as amended to include the correct spelling of school.

In Favor: Unanimous

5. Section 18 Emergency Registration Renewal Request for Coumaphos to Control Varroa Mites and Small Hive Beetles in Managed Honey Bee Colonies

The Division of Plant Industry in the Maine Department of Agriculture, Food & Rural Resources has again requested that the Board petition EPA for a FIFRA Section 18 specific exemption for use of coumaphos (CheckMite+) to control both Varroa Mites and Small Hive Beetles in managed bee colonies. Fluvalinate has been used to control Varroa Mites since 1987 but resistance started developing in 1997. In addition, Small Hive Beetles have spread into Maine and there is no product currently registered to control this pest. The State Apiarist points out that a healthy bee keeping industry is needed to support Maine agriculture, and that a regulatory control product is essential so that migratory bee operators may continue to service the various commodity groups in this state. The request is supported by the product manufacturer, Bayer Corporation, and their regulatory specialist points out they are continuing to pursue a full Section 3 Registration with EPA.

Presentation By: Wesley C. Smith
Pesticides Registrar

Action Needed: Approve/Deny request to petition EPA for a Section 18 Specific Exemption registration for coumaphos for use with bees.

- ☒ Smith pointed out that the registrant believes they will have a Section 3 label by this time next year. In response to a question, Tony Jadczak, State Apiarist, reported that bees were now being imported from Australia. That was the last place that mites were not a problem.

Walton/Jemison: Motion made and seconded to petition EPA for a Section 18 Specific Exemption registration for coumaphos for use with bees.

In Favor: Unanimous

6. Section 18 Emergency Registration Request for Fomesafen to Control Broadleaf Weeds in Dry Beans

In eight of the past ten years, the Board has petitioned EPA for a FIFRA Section 18 specific exemption for use of fomesafen (Reflex 2LC) to control broadleaf weeds in dry beans. Syngenta submitted a time-limited tolerance petition to EPA in 1996 and has

conducted a residue program to allow for a national label on both snap and dry beans. However, EPA will not review the data until the FQPA risk assessment is completed. The company believes that EPA will issue a permanent tolerance this year but that it will likely not occur before the 2006 growing season. The Cooperative Extension's Vegetable Specialist has therefore requested that the Board petition for a Section 18 registration in 2006 so growers may control redroot pigweed, nightshade, wild mustard and common ragweed in their crops. The University of Maine Scientist also points out that other available herbicides have been ineffective at controlling these problem weeds throughout the past growing seasons, and growers need the product to achieve higher yields and profitability.

Presentation By: Wesley C. Smith
Pesticides Registrar

Action Needed: Approve/Deny the request to petition EPA for a Section 18
Registration for fomesafen for Dry Beans.

- ☒ Smith noted that this registrant also thought they were close to having a full Section 3 label.

Jemison/Walton: Motion made and seconded to petition EPA for a Section 18
Registration for fomesafen for Dry Beans.

In Favor: Bradstreet, Eckert, Jemison and Walton
Opposed: Humphreys

7. Citizen Petitions Forcing the Board to Initiate Rule-Making to Amend Three Chapters of the Boards' Regulations

The Maine Administrative Procedures Act provides that any person may petition an agency for the adoption or modification of any rule. If the petition is submitted by 150 or more registered voters, the agency shall initiate rule-making within 60 days after receipt of the petition. On January 19, 2006, representatives of the Toxics Action Center and Environment Maine submitted over 150 verified signatures on each of three petitions. The first seeks to amend Chapter 22 to prohibit aerial agricultural application in Maine, the second seeks to amend Chapter 40 to prohibit the agricultural use of organophosphate insecticides and the third seeks to amend Chapter 28 to rescind the fee for persons applying to be on the Pesticide Notification Registry and to provide that Material Safety Data Sheets may be provided electronically. The staff will distribute the requested language for the three amendments and point out that the members need to make several decisions on the timing, location and format for the hearing.

Presentation By: Robert I. Batteese, Jr.
Director

Action Needed: Discussion and decisions on the date, time, location and format for
the public hearing.

- ☒ Batteese led the members through the timetable for initiating rule-making and holding the public hearing. He also sought guidance on the procedures for conducting the public

hearing. There was consensus that the hearing should start at 7:00 P.M on Thursday evening, March 30th and continue at 8:30 A.M. on Friday morning, March 31st. Because there are three different rules, it was agreed that it would be difficult to select spokespersons for the proponents and opponents. It was therefore agreed that persons would be allowed to speak for up to five minutes and that there would be a rotation of one proponent to one opponent Thursday evening and a rotation to include a person neither for nor against on Friday morning. Eckert asked Hicks to determine what organophosphates are used in Maine and what actions EPA is taking in regard to their registration. Hicks asked Will Everitt of the Toxics Action Center if his petition was limited to the organophosphate insecticides and he replied affirmatively.

8. Creation of Committee to Develop Best Management Practices to Address Lawn Care Applications When Turf is Saturated.

At the July 29, 2005 Board meeting, the staff made a presentation summarizing its findings with regard to commercial lawn care applications conducted in the Portland area the week of May 23 to May 27, 2005. The staff reported on the dates of rainfall, number of pesticide applications conducted that week and the pertinent label statements regarding applications prior to rainfall or to saturated soil. The members expressed concern about some of the lawn care company's standards of practice for pesticide applications particularly during very rainy periods with saturated soil conditions. The staff was directed to seek volunteers who would be willing to serve on a stakeholders committee to develop turf care best management practices (BMP's) to protect water resources. The Board is hoping to convene a diverse small group (6 - 8 individuals) to work on this issue and the staff has received a number of resumes from interested individuals.

Presentation By: Gary D. Fish
Certification and Licensing Specialist

Action Needed: Review of resumes from persons volunteering for the committee and selection of members to serve on committee to develop BMPs.

- ☒ Fish pointed out there were four more resumes in their packets and they were from master gardeners. This would bring the committee up to 10 members if the Board accepted them all. Humphreys recommended leaving the decision on membership up to Fish and the co-chairs Jemison and Simonds. Eckert checked and found consensus to accept this recommendation.

9. Consideration of Staff Negotiated Consent Agreement with Maine General Medical Center of Waterville

On June 3, 1998, the Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance in matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine and resolve the matter. This case involved a Spring 2005 application by a company employee of an herbicide to the perimeter of a hospital building at the Seton Unit that is considered a place open to use by the public. At the time of this application, no company employee was licensed as a commercial applicator. This action constitutes a violation of the

Board's statute requiring that a licensed applicator be present whenever custom applications are conducted.

Presentation By: Henry S. Jennings
Chief of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff.

- ☒ Jennings pointed out this was a common case of a person applying an over the counter product in a place open to use by the public.

Bradstreet/Walton: Motion made and seconded to approve the consent agreement negotiated by staff.

In Favor: Unanimous

10. Consideration of Staff Negotiated Consent Agreement with Sandy River Golf Course of Farmington Falls

This case is similar to the preceding agenda topic where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine and resolve the matter. This case involved the owner making occasional applications of pesticides over a two-year period to the turf at the Sandy River Golf Course that is considered a place open to use by the public. At the time of these applications, no person from the course was licensed as a commercial applicator. These actions constitute a violation of the Board's statute requiring that a licensed applicator be present whenever custom applications are conducted.

Presentation By: Henry S. Jennings
Chief of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff.

- ☒ Jennings explained this was a small course where the owner made the applications but was apparently reluctant to take the licensing exams.

Bradstreet/Jemison: Motion made and seconded to approve the consent agreement negotiated by staff.

In Favor: Unanimous

11. Consideration of Staff Negotiated Consent Agreement with JBI Helicopter, Inc. of Pembroke, New Hampshire

This case is also similar to the preceding agenda topic in that there was a willingness to pay a fine and resolve the matter. This case involved a 2004 complaint from a Columbia Falls resident that the company made an unauthorized aerial application of insecticide to his blueberry field. The Board's investigation determined the presence of the insecticide on the complainant's property at levels normally seen in sprayed fields and did not find

any evidence to suggest a different applicator treated the field. The aerial applicator company refused to admit they treated the field, but in order to settle the case, agreed to pay a monetary penalty and agree that any future violation could be considered a subsequent violation for purposes of assessing future penalties.

Presentation By: Henry S. Jennings
Chief of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff.

- ☒ Jennings observed that this case involved an allegation that a helicopter sprayed the wrong field and that a civil case had been settled. He noted that the GPS data was troubling but the staff had held their ground because there was no other explanation for how the residues representing a direct application could have been present on the complainant's property.

Humphreys/Bradstreet: Motion made and seconded to approve the consent agreement negotiated by staff.

In Favor: Unanimous

12. Other Old or New Business

a. Legislative Update – R. Batteese

- ☒ Batteese called the members attention to a summary sheet he had included in their packets and briefly summarized the Ag Committee's actions to date. Humphreys expressed concern with adding a pest control operator and indicated her preference for a lawncare person if Berry was to be replaced. Jemison stated that he had found the institutional memory of Berry and Eckert to be very helpful when he joined the Board. A consensus developed that Humphreys should draft a letter for the Board to sign and send to the Governor expressing interest in having Berry remain on the Board.

b. Variance Granted to Bangor Public Works
Department for 2006 Vegetation Management Program – R. Batteese

- ☒ Batteese indicated the staff had issued a repeat variance and that there had never been any complaints about their herbicide program.

c. Central Maine Power Company's
2006 Vegetation Management Program – R. Batteese

- ☒ Batteese advised this was an informational item since CMP did not utilize powered equipment on their lines and therefore did not need to request a variance.

d. Arboviral Disease Update – L. Hicks

- ☒ Hicks pointed out the potential need to update the Board's West Nile Virus document from 2001 in advance of a March 29th workshop presentation. At a

Biting Fly Training Session. Eckert recommend that Hicks make any necessary changes and send them out to both the ERAC and MAC members for review.

e. Other ???

☒ None

13. Schedule and Location of Future Meetings

a. Date and location for the next meeting tentatively scheduled for March 31st.

☒ The members scheduled the next meeting to follow the public hearing on Friday, March 31st.

b. Date and location for the following meeting.

☒ The members noted that two members were absent and that at least one of the members present had a conflict with either Wednesday, May 3rd or Friday, May 12th. Batteese was directed to notify the two absent members of these two dates so they could make plans around them.

14. Adjourn

☒ A motion to adjourn was accepted at 12:31 P.M.

Robert I. Batteese, Jr.
Director